

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

CP NO. 108/241-242(PB)/2020

IN THE MATTER OF:

Mrs. Richa Gupta and Ors. Petitioners
v.
M/s. Hotel Zodiac Pvt. Ltd. & Ors. Respondents

**SECTION: UNDER SECTION 241-242 OF THE COMPANIES
ACT, 2013**

ORDER DELIVERED ON 12.11.2020

CORAM:

**SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Petitioner(s): Ms. Ranjana Roy Gawai, Mr. Pervinder
Tanwar and Mr. Vineet Kumar, Advs.
For the Respondent(s): Mr. Krishna Kumar, Adv.

ORDER

Per: SH. B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT

HEARD ON: 24.09.2020

It is a company petition filed u/s 241-242 of the Companies Act, 2013 by the petitioners counsel seeking final prayers to declare first petitioner as Director, to remove second and third respondents as Directors, to nullify the share transfers, to bring back siphoned funds, to declare shifting of registered office of R1 Company as bad in law inter alia asking for interim reliefs to

maintain status quo on directorship and shareholding, status quo on the property of the company, inspection of statutory records of the respondent company and for appointment of receiver to take minutes book and other records in the custody of the respondents on the premise that R2 & R3 illegally transferred the shareholding of the petitioners in the name of them and that P1 was illegally removed as Director of R1 Company and appointed R2 & R3 as Directors and that unlawfully appointed a new auditor on 07.04.2019, and that the respondents siphoned off funds of R1 company and threatening to create third party rights over the property of the company and that the respondents forged and fabricated the documents uploaded with the ROC, which is unfairly prejudicial to the interest of the petitioners.

2. According to the petitioners, R1 Company (M/s. Hotel Zodiac Pvt. Ltd.) was incorporated on 11.10.1991 with ROC, Jaipur with the authorized capital of ₹22,50,000 divided into 2,25,000 equity shares of ₹10 each. The petitioners submit that this company was promoted on the instance of the grandfather of P1 for the benefit of the family and his relatives. Since the year 2010, the company was managed by Mrs. Veena Gupta and Mrs. Richa Gupta (P1). On



11.03.2019, the registered office of the company was illegally shifted to Karol Bagh by the respondents.

3. The petitioners counsel submits that P1 to P-3 together held 10.22% shareholding as on 31.03.2016 and that shareholding remains same till 30.11.2018, whereas R2&R3 together held 10.89% shareholding, the shareholders other than the petitioners and respondents together held 78.89% shareholding in the company, but these respondents to the surprise of the petitioners illegally usurped the shareholding of the petitioners as well as other shareholders in two tranches one on 03.12.2018 and 27.02.2019. The respondents have reflected transfer of shareholding of all the shareholders except the two deceased shareholders. On 03.12.2018, by way of Form MGT-7 and MGT-9 allegedly for the financial year ending March, 2017, Late Shivcharan Lal Gupta and Late Narbada Chaudhary shareholding was shown as transferred on 27.02.2019. R2 as on date holds 4.44% and respondent no. 3 holds 95.56% in R1 Company.

4. The Petitioners counsel submits that R2 & R3 have furnished forged and fabricated forms with MCA and other relevant authorities as the petitioners' shareholding was transferred to them, for which the petitioners have not received consideration.

5. The petitioners counsel submits that the financial statement filed on 30.11.2017 for the financial year ending March, 2017 clearly reflects that shareholding of the petitioners as well as others, wherein R2 was not even shown as Director but for the annual return filed on 03.12.2018 for the financial year ending March, 2018, shareholding pattern has been completely changed giving contrary picture to that of shareholding filed with ROC on 30.11.2017.

6. The petitioners counsel further submits that P1 has been shown as removed as Director w.e.f. 26.12.2018 and Mrs. Veena Gupta was shown as removed as Director and shareholder on 04.01.2019 whereas Sohanlal Gupta (R2) was shown as appointed as Director on 30.11.2019 w.e.f. 01.03.2017 and Kusum Gupta (R3) was shown as appointed as Director on 26.12.2018. With regard to the resignation letter of the petitioners filed by the respondents, the petitioners counsel submits that signature of P1 was forged and fabricated by cut copy paste process because P1 never filed any DIR-11 intimating ROC of her alleged resignation.

7. The petitioners counsel submits that R2 has been shown as appointed as Director on 30.11.2018 w.e.f. 01.03.2017 but it is inconceivable for R2 to become Director on 01.03.2017 because

had he been appointed as Director from 01.03.2017, the Annual Accounts ending for March, 2017 would reflect R2 as Director in the year ending March, 2017.

8. The petitioners counsel submits that these respondents have shown that an AGM was held on 26.12.2018, had such meeting being held, the petitioners should have been notified about that meeting as per procedure laid under companies Act but no such meeting has been held or notice served upon the petitioners.

9. The petitioners counsel submits that a new auditor has been appointed in the place of previous auditor on the same day when they received resignation letter of the earlier auditor, i.e. dated 11.03.2019.

10. The petitioners counsel further submits that how these respondents could hold a meeting on such short notice without consent of 95% of the shareholders in terms of Section 100 and 101 of the Companies Act, 2013. She says that resolution for his appointment was passed on 07.04.2019 but his appointment letter dated 06.04.2019 was sent to the new auditor even before passing a resolution about his appointment.



11. The petitioners counsel further submits that R1 has one commercial property located in Karol Bagh having 14 shops. The rentals from the said shops is the only business of R1 Company. Since it has come to the notice of P1 that the rents collected from those shops has not been accounted for in the records of R1 Company, the petitioners are under the apprehension that the same has been siphoned off by R2. They are also under apprehension that respondents are in the process of selling assets of R1 Company so as to cause wrongful loss to R1 Company and the petitioners.

12. The petitioners counsel further submits that what all forms the respondents filed with the ROC are forged and fabricated documents, therefore inspection of those documents will disclose the fraud played by the respondents, therefore sought for inspection of the documents as well as appointment of a receiver.

13. As against these submissions, the Respondents counsel submits that Mr. Rajesh Gupta, brother in law of R2 was allowed to manage R1 Company as well as M/s. Shri Hanumant Estates Pvt. Ltd., which is another company set up by R2. However, Mr. Rajesh Gupta along with his wife Mrs. Veena Gupta and his daughter Ms. Richa Gupta fraudulently attempted to take the

control of both the companies, in pursuance thereof, they committed various frauds including increase in the capital and allotting shares to themselves by attempting to show as R2 & R3 resigned from the Company. Being aggrieved of the same, R2 & R3 had filed two separate petitions CP114/2010 with regard to the affairs of R1 Company, CP115/2010 with regard to the affairs of M/s. Shri Hanumant Estates Pvt. Ltd. against Mr. Rajesh Gupta on or about 01.12.2010 before CLB, New Delhi Bench. Over a period of time, when these matters were transferred to NCLT, in view of criminal action initiated against Mr. Rajesh Gupta and his family, they sought settlement by agreeing to release R1 Company fully and also to transfer all the shares held by them and their group to R2 & R3 and not to interfere with the working of R-1 Company. As to another company M/s. Shri Hanumant Estates Pvt. Ltd. it was agreed that there would be only two shareholders namely Mr. Sohanlal Gupta (R-2) and Ms. Veena Gupta (R-3) and Hanumant Company would be managed by those two persons alone. All these aspects were disclosed in the settlement signed by them and the said settlement was recorded by NCLT on 30.11.2018, accordingly above said two petitions were disposed of.



In the said application, transfer of shares of R-1 Company to R-2 & R-3 was recorded.

14. For the sake of clarity, the respondents counsel has also placed averments of the signed settlement application which are as follows:

“Para 2, 3 which recorded the transfer of shares.

Para 10 – Noted that R-2 and R-3 will alone manage/own R-1 Company.

Para 12 – R-2 to be appointed Director from 01.03.2017 and allowed to file Form MGT-7, MGT-14 and all other documents to the Registrar showing changes.....

Page 229 – Form DIR-12 was filed by Mrs. Veena Gupta (mother of Ms. Richa Gupta, P-1), confirming and appointing Mr. Sohan Lal Gupta as Director w.e.f. 01.03.2017. Page – 229 of the Paper Book.

This document was digitally signed by Mrs. Veena Gupta and Mr. Disha Mahehsvari, Company Secretary, the practicing professional of the company.



Para – 14 The P-1 specifically confirmed that Ms. Richa would have no claim whatsoever with regard to any shares in M/s Hotel Zodiac Pvt. Ltd. or any property.....

Para -18 Claims were to be withdrawn by the parties.

Para – 20/21/22 Direction sought in terms of the settlement before this Hon'ble Tribunal.

Page – 9 All the parties including ms. richa gupta, p-1 duly signed the application.

In terms of the settlement, all the proceedings, criminal as well as civil proceedings were withdrawn.”

15. The respondents counsel has also disclosed returns filed reflecting the facts which are as follows:

- “i. Form MGT-7 (2017) at Page No. 89, digitally supported by the professional Mr. Seema Vyas, Company Secretary, Membership No. 50041 based on the instruction of P-1 and Mrs. Veena Gupta (Dir). The list of shareholders attached. Refer Page No. 111- recording transfer of shares of Ms. Richa to Mrs. Kusum Gupta.*
- ii. Form MGT-7 (2018) at Page No. 114, digitally supported by the professional Mr. Seema Vyas, Comp. Secretary,*

Membership No. 50041 based on the instruction of P-1 and Mrs. Veena Gupta (Dir).

- iii. *Form MGT-7 (2019 at Page No. 69, filed by the company, confirming that there were only two shareholders and Ms. Richa Gupta and Mrs. Veena Gupta had resigned. Page No. 81, declaration dated 15.04.2019.”*

16. The respondents counsel submits that filing of the present petition is total abuse of the process of the Court because all this litigation ended with closure of the earlier company petitions, to that effect, an order was passed by this NCLT itself on 13.01.2018 in spite of it, suppressing all this material, the petitioner has again filed this petition with bald allegations of forgery, but they have not disclosed shares certificates or any other document reflecting that they are still in the possession of the shares of R1 Company.

17. In the case of P2 namely Mrs. Vijaylakmi Dangayach and P3 Mr. Jagdish Dangayach, they also executed transfer deeds and filed Form 7B on 29.11.2018 with ROC in the normal course of business and that is part of the record, therefore this petition is liable to be dismissed in limine.

18. On hearing the submissions of either side, it is evident on record that it is a company petition filed with allegations that R2 & R3 have fraudulently transferred the petitioners' shares to themselves and usurped into the management of the company causing prejudice to the petitioners, but on record nothing has come before this Bench showing that they are in the possession of at least share certificates to show that their shares were fraudulently transferred in the name of the respondents. As against this bald allegation, the respondents counsel has placed evidence reflecting previous dispute and settlement recording transfer of shares and transfer of management to R2 & R3. Now these petitioners filing this kind of petition without any material supporting their contentions is undoubtedly abuse of process of law. At least to draw a presumption that respondents forged the transfer deed or fabricated document for transfer of petitioners shares to the respondents, duty is cast upon the petitioners to show the original share certificates before this Bench, that has not been done. However, for NCLT itself recorded the settlement reflecting transfer of shares in the CPs previously filed, these petitioners should not have ventured to come up with this kind of litigation.



19. For admission of any company petition, it is the duty of the petitioners to show not only pleadings but also supporting material reflecting that their pleadings are triable to find out truth from those allegations, but there being no iota of evidence supporting the pleadings of the petitioners, on the contrary the respondents have filed concrete material reflecting transfer of shares through an order passed by NCLT, we are of view that this petition does not deserve to be admitted to proceed further, therefore this company petition is hereby dismissed in limine.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

12.11.2020
VINEET